

# HOUSE BILL No. 1221

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-11-2; IC 13-14-8.

**Synopsis:** NPDES variances. Establishes criteria for variances from water quality standards that are at least in part the basis of a National Pollutant Discharge Elimination System (NPDES) permit.

**Effective:** July 1, 2003.

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**Bottorff**

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January 8, 2003, read first time and referred to Committee on Environmental Affairs.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1221

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 13-11-2-29 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 29. "Clean Water Act",  
3 for purposes of IC 13-18-13 **and IC 13-14-8**, refers to:

4 (1) 33 U.S.C. 1251 et seq.; and

5 (2) regulations adopted under 33 U.S.C. 1251 et seq.

6 SECTION 2. IC 13-11-2-66.8 IS ADDED TO THE INDIANA  
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
8 [EFFECTIVE JULY 1, 2003]: **Sec. 66.8. "Endangered Species Act"**,  
9 for purposes of IC 13-14-8, refers to:

10 (1) 16 U.S.C. 1531 et seq.; and

11 (2) **regulations adopted under 16 U.S.C. 1531 et seq.**

12 SECTION 3. IC 13-11-2-91.5 IS ADDED TO THE INDIANA  
13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
14 [EFFECTIVE JULY 1, 2003]: **Sec. 91.5. "Great Lakes system"**, for  
15 purposes of IC 13-14-8, has the meaning set forth in 327  
16 IAC 2-1.5-2(42), as in effect January 1, 2003.

17 SECTION 4. IC 13-11-2-139.5 IS ADDED TO THE INDIANA



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CODE AS A NEW SECTION TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2003]: **Sec. 139.5. "New Great Lakes  
discharger", for purposes of IC 13-14-8, has the meaning set forth  
in 327 IAC 5-1.5-36, as in effect January 1, 2003.**

SECTION 5. IC 13-11-2-178.5 IS ADDED TO THE INDIANA  
CODE AS A NEW SECTION TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2003]: **Sec. 178.5. "Recommencing  
discharger", for purposes of IC 13-14-8, has the meaning set forth  
in 327 IAC 5-1.5-50, as in effect January 1, 2003.**

SECTION 6. IC 13-14-8-8 IS AMENDED TO READ AS  
FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) If a person who  
is affected by a rule adopted by a board believes that the imposition of  
the rule would impose an undue hardship or burden upon the person,  
the person may apply to the commissioner for a variance from the rule  
under:

(1) **this section; or**

(2) **section 9 of this chapter if the variance sought is from a  
water quality standard.**

(b) The commissioner may hold a public hearing on an application  
submitted under subsection (a).

(c) If the commissioner determines that immediate compliance with  
the rule would impose an undue hardship or burden upon the applicant,  
the commissioner, except as provided in section 9 of this chapter, may  
grant a variance from the rule for any period not exceeding one (1)  
year.

(d) Upon the request of an applicant, the commissioner may renew  
an expired variance if the commissioner determines that compliance  
with the rule would continue to impose an undue hardship or burden  
upon the applicant. Except as provided in section 9 of this chapter,  
each renewal may be granted for a period not exceeding one (1) year.

SECTION 7. IC 13-14-8-9 IS AMENDED TO READ AS  
FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) This section  
applies to a variance ~~granted under section 8 of this chapter or~~  
~~IC 13-7-7-6 (before its repeal)~~ from a water quality standard that is at  
least in part the basis of a National Pollutant Discharge Elimination  
System permit issued under this title.

(b) **Except as provided in subsections (c) and (d), the  
commissioner may grant a variance under this section if the  
applicant for the variance:**

(1) **demonstrates that a decision to grant the variance would  
comply with:**

(A) **40 CFR 131.10;**

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- 1 (B) 40 CFR 131.12;  
 2 (C) 40 CFR 131.20; and  
 3 (D) 40 CFR 131.21; and  
 4 (2) demonstrates that attaining the water quality standard is  
 5 not feasible because of at least one (1) of the following:  
 6 (A) Naturally occurring pollutant concentrations prevent  
 7 the attainment of the water quality standard.  
 8 (B) Flow conditions or water levels that are:  
 9 (i) natural;  
 10 (ii) ephemeral;  
 11 (iii) intermittent; or  
 12 (iv) low;  
 13 prevent the attainment of the water quality standard  
 14 unless those conditions can be compensated for by the  
 15 discharge of a sufficient volume of effluent without  
 16 violating state water conservation requirements.  
 17 (C) A condition or source of pollution caused by humans  
 18 prevents the attainment of the water quality standard and:  
 19 (i) the condition or source of pollution cannot be  
 20 remedied; or  
 21 (ii) correcting the condition or source of pollution would  
 22 cause more environmental damage than leaving the  
 23 condition or source of pollution in place.  
 24 (D) Dams, diversions, or other types of hydrologic  
 25 modifications prevent the attainment of the water quality  
 26 standard and it is not feasible to:  
 27 (i) restore the water body to its original condition; or  
 28 (ii) operate the modification in a way that would result  
 29 in the attainment of the water quality standard.  
 30 (E) Physical conditions related to the natural features of  
 31 the water body and unrelated to chemical water quality,  
 32 including:  
 33 (i) the lack of a proper substrate;  
 34 (ii) cover;  
 35 (iii) flow;  
 36 (iv) depth;  
 37 (v) pools;  
 38 (vi) riffles; or  
 39 (vii) similar conditions;  
 40 prevent the attainment of the aquatic life protection uses.  
 41 (F) Controls more stringent than those required by  
 42 Sections 301(b) and 306 of the Clean Water Act:

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(i) would be necessary to attain the water quality standard; and

(ii) if implemented, would result in substantial and widespread economic and social impact.

(c) The commissioner may not grant a variance under this section if:

(1) water quality standards can be attained by:

(A) implementing effluent limits required under Sections 301(b) and 306 of the Clean Water Act; and

(B) by the implementation of cost effective and reasonable best management practices for nonpoint source control; or

(2) the variance:

(A) would likely jeopardize the continued existence; or

(B) would likely result in the destruction or adverse modification of critical habitat;

of an endangered or threatened species listed under Section 4 of the Endangered Species Act.

(d) The commissioner may grant a variance under this section within the Great Lakes system:

(1) to:

(A) a new Great Lakes discharger; or

(B) a recommencing discharger;

only under 327 IAC 2-1.5-17(a); and

(2) only if the criteria in 40 CFR 132, Appendix F, Procedure 2 are met.

Except as provided in subsection (e), a variance from a water quality standard of the water pollution control board under section 8 of this chapter or IC 13-7-7-6 (before its repeal) may be:

(e) The commissioner may:

(1) ~~granted~~ grant a variance under this section for not more than five (5) years; and

(2) ~~renewed~~ renew a variance under this section for not more than five (5) years.

~~(e)~~ (f) A variance: ~~granted under section 8 of this chapter or IC 13-7-7-6 (before its repeal)~~ from a water quality standard that is at least in part the basis of a National Pollutant Discharge Elimination System permit:

(1) ~~issued~~ granted under this title; ~~section~~; and

(2) extended under IC 13-15-3-6; ~~or IC 13-7-10-2(e) (before its repeal)~~;

remains in effect until the National Pollutant Discharge Elimination System permit expires.

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- 1       (g) To the extent that rules adopted by the water pollution  
2       control board are inconsistent with this section, the board shall  
3       amend the rules for granting variances under this section.

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